

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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CC:CORP:6

PLR-109509-09

Date:

July 20, 2009

Legend

Distributing =

Controlled A =

Controlled B =

Shareholder c =

Shareholder d =

Apartment Building 1 =

Apartment Building 2 =

State X =

Date e =

Date f =

Litigation =

x% =

y% =

Dear :

This letter responds to your February 20, 2009, letter requesting rulings on certain federal income tax consequences of a proposed transaction described below (the "Proposed Transaction"). Additional information was received in letters dated April 1, 2009, May 5, 2009, May 7, 2009, May 11, 2009, June 23, 2009, and June 26, 2009. The information provided in these letters is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Distribution (described below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporations, or both (see § 355(a)(1)(B) of the Internal Revenue Code and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or either of the controlled corporations (see § 355(e) and § 1.355-7).

Summary of Facts

Distributing is a closely held State X corporation incorporated on Date e. Since Date f, Distributing has been taxed as a Subchapter S corporation. Distributing is a cash method taxpayer that files its returns on a calendar year. Distributing has one class of voting common stock outstanding. Shareholder c owns x% and Shareholder d owns y% of Distributing's outstanding stock.

Distributing is engaged in the rental real estate business consisting of operating and managing Apartment Building 1 and Apartment Building 2. The financial information, submitted by Distributing, indicates that Apartment Building 1 and Apartment Building 2 each has had gross receipts and operating expenses representing the active conduct of

a trade or business for each of the past five years.

Distributing's employees are actively engaged in the following regular business activities: advertising for tenants, speaking with potential tenants, showing properties to potential tenants, preparing leases for tenants, collecting rent, cleaning and maintaining common areas, receiving calls from tenants for repairs, paying bills, maintaining books, painting and cleaning apartment units for new tenants, and when necessary evicting tenants. In addition to the above activities, Distributing's employees are periodically engaged in making major repairs, including renovations. The work required for these major repairs is personally performed by Distributing's employees and also contracted for by independent contractors. Shareholder c and Shareholder d each perform both operational and managerial duties with respect to Apartment Building 1 and Apartment Building 2.

Significant disagreements had developed between Shareholder c and Shareholder d concerning the operation of Distributing. These disagreements have impaired Distributing's ability to function as a business and have resulted in Litigation in State X. This Litigation was resolved through the parties reaching a court approved settlement whereby Distributing's assets would be divided between Shareholder c and Shareholder d. To accomplish this settlement, the parties have structured the Proposed Transaction, described below.

Proposed Transaction

For what are represented to be valid business purposes, Distributing has proposed the following transaction (the "Proposed Transaction"):

- (i) Distributing will form Controlled A and Controlled B as State X corporations (collectively, the "Controlled corporations"). Each of the Controlled corporations will be a cash-method taxpayer which will file its tax returns on a calendar year, and each will have one class of voting common stock. Each Controlled corporation upon formation will elect to be taxed as a Subchapter S corporation.
- (ii) Distributing will transfer Apartment Building 1 and a de minimis amount of cash to Controlled A in exchange for all of the Controlled A stock and the assumption by Controlled A of liabilities related to that apartment building ("Contribution 1").
- (iii) Distributing will transfer Apartment Building 2 and a de minimis amount of cash to Controlled B in exchange for all of the Controlled B stock and the assumption by Controlled B of liabilities related to that apartment building ("Contribution 2"). Contribution 1 and Contribution 2 are sometimes collectively referred to as the "Contributions."
- (iv) Distributing will distribute all of the Controlled A stock to Shareholder c in exchange for all of Shareholder c's Distributing stock, and it will distribute all of the Controlled B

stock to Shareholder d in exchange for all of Shareholder d's Distributing stock (together, the "Distribution"). Thereafter, Shareholder c will own all of the Controlled A stock, and Shareholder d will own all of the Controlled B stock.

(v) Distributing will liquidate.

Representations

(a) Distributing, Controlled A, Controlled B, and each of their respective shareholders will pay their own expenses incurred in connection with the Proposed Transaction.

(b) The indebtedness owed by Controlled A or Controlled B to Distributing after the Distribution, if any, will not constitute stock or securities.

(c) The fair market value of the Controlled A stock received by Shareholder c will be approximately equal to the fair market value of the Distributing stock surrendered by Shareholder c in the exchange, and the fair market value of the Controlled B stock received by Shareholder d will be approximately equal to the fair market value of the Distributing stock surrendered by Shareholder d in the exchange.

(d) No part of the consideration to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of the corporation.

(e) No part of the consideration to be distributed by Distributing will be received by a security holder as an employee or in any capacity other than that of a security holder of the corporation.

(f) The five years of financial information submitted on behalf of Distributing is representative of its present operation, and with regard to such corporation, there have been no substantial operational changes since the date of the last financial statements submitted.

(g) The five years of financial information submitted on behalf of Apartment Building 1 to be transferred to Controlled A is representative of its present operation, and with regard to Apartment Building 1, there have been no substantial operational changes since the date of the last financial statements submitted.

(h) The five years of financial information submitted on behalf of Apartment Building 2 to be transferred to Controlled B is representative of its present operation, and with regard to Apartment Building 2, there have been no substantial operational changes since the date of the last financial statements submitted.

(i) Following the transaction, Controlled A and Controlled B will each continue, independently and with its separate employees, the active conduct of its share of all the

integrated activities of the business conducted by Distributing prior to consummation of the transaction. Distributing will be liquidated.

(j) The distribution of the stock of Controlled A and Controlled B is carried out for the following corporate business purposes: (i) the facilitation of the settlement of the Litigation instituted by Shareholder c against Shareholder d and Distributing regarding the operations of the business, and (ii) to avoid further disharmony in the operations of the business. The distribution of the stock of Controlled A and Controlled B is motivated, in whole or substantial part, by one or more of these corporate business purposes.

(k) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing, Controlled A, Controlled B, or collectively.

(l) The total fair market value of the assets Distributing will transfer to Controlled A in Contribution 1 will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled A in connection with the exchange, (ii) the amount of any liabilities owed to Controlled A by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from Controlled A in connection with the exchange.

(m) The total fair market value of the assets Distributing will transfer to Controlled B in Contribution 2 will exceed the sum of (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by Controlled B in connection with the exchange, (ii) the amount of any liabilities owed to Controlled B by Distributing that are discharged or extinguished in connection with the exchange, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from Controlled B in connection with the exchange.

(n) The liabilities to be assumed (within the meaning of § 357(d)) by Controlled A and Controlled B in the Contribution, if any, and the liabilities to which the transferred assets are subject, if any, were incurred in the ordinary course of business and are associated with the assets being transferred.

(o) The aggregate fair market value of the assets Distributing transfers to each Controlled corporation in the Contributions will equal or exceed the aggregate adjusted basis of these assets.

(p) The fair market value of the assets of each Controlled corporation will exceed the amount of its liabilities immediately after the exchange.

(q) Distributing neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the transaction.

(r) No intercorporate debt will exist between Distributing and either Controlled corporation or between Controlled A and Controlled B at the time of, or subsequent to, the distribution of the stock of Controlled A and Controlled B.

(s) Payments made in connection with all continuing transactions, if any, between Controlled A and Controlled B, will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length.

(t) No parties to the transaction are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(u) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or 50-percent or more of the total value of shares of all classes of Distributing stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(v) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50-percent or more of the total combined voting power of all classes of either Controlled A or Controlled B stock entitled to vote, or 50-percent or more of the total value of shares of all classes of either Controlled A or Controlled B stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (ii) attributable to distributions on Distributing stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(w) The Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing, Controlled A, or Controlled B (including any predecessor or successor of any such corporation).

(x) Immediately after the Distribution, neither Distributing, Controlled A, nor Controlled B will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

Rulings

(1) Contribution 1 and Contribution 2, together, followed by the Distribution, will qualify as a reorganization within the meaning of § 368(a)(1)(D). Distributing, Controlled A, and Controlled B will each be “a party to a reorganization” within the meaning of § 368(b).

(2) No gain or loss will be recognized by Distributing on the Contributions (§§ 361(a) and 357(b)) with the exception that gain will be recognized by Distributing on the Contributions to the extent that the liabilities to be assumed by Controlled A and Controlled B, respectively, (plus the liabilities to which the transferred assets are subject) exceed Distributing's adjusted basis in the assets transferred to Controlled A and Controlled B, respectively (§ 357(c)).

(3) No gain or loss will be recognized by Controlled A or Controlled B on the Contributions (§ 1032(a)).

(4) The basis of each asset received by Controlled A and Controlled B in the Contributions will equal the basis of that asset in the hands of Distributing immediately before the Contributions, increased by the amount of gain recognized by Distributing on the Contributions under ruling (2) above (§ 362(b)).

(5) The holding period of each asset received by Controlled A and Controlled B in the Contributions will include the period during which Distributing held that asset (§ 1223(2)).

(6) No gain or loss will be recognized by Distributing on the Distribution (§ 361(c)(1)).

(7) No gain or loss will be recognized by (and no amount will be included in the income of) Shareholder c or Shareholder d on the Distribution (§ 355(a)(1)).

(8) The aggregate basis of the Controlled A stock in the hands of Shareholder c immediately after the Distribution will equal Shareholder c's aggregate basis in the Distributing stock surrendered in the Distribution (§ 358(a)(1)).

(9) The aggregate basis of the Controlled B stock in the hands of Shareholder d immediately after the Distribution will equal Shareholder d's aggregate basis in the Distributing stock surrendered in the Distribution (§ 358(a)(1)).

(10) The holding period of the Controlled A stock received by Shareholder c will include the holding period of the Distributing stock surrendered by the shareholder in exchange therefore, provided such stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(11) The holding period of the Controlled B stock received by Shareholder d will include the holding period of the Distributing stock surrendered by the shareholder in exchange therefore, provided such stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(12) Proper allocation of earnings and profits between Distributing, Controlled A, and Controlled B will be made in accordance with § 312(h) and § 1.312-10(a). No allocation shall be made of any deficit of Distributing's earnings and profits to Controlled A or to Controlled B.

(13) Distributing's momentary ownership of the stock of Controlled A and Controlled B, as part of the reorganization under § 368(a)(1)(D), will not cause Controlled A or Controlled B to have an ineligible shareholder for any portion of its first taxable year under § 1361(b)(2)(B) (Rev. Rul. 72-320, 1972-1 C.B. 270).

Caveats

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code or regulations or the tax treatment of any condition existing at the time of, or effects resulting from, the Proposed Transaction that is not specifically covered by the above rulings. In particular, no opinion is expressed regarding: (i) whether the Distribution satisfies the business purpose requirement of § 1.355-2(b), (ii) whether the Distribution is used principally as a device for the distribution of the earnings and profits of Distributing or the Controlled corporations or both (see § 355(a)(1)(B) and § 1.355-2(d)), or (iii) whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in Distributing or either of the Controlled corporations (see § 355(e) and § 1.355-7).

Procedural Matters

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Steven J. Hankin
Senior Technician Reviewer, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: